IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

SA.No. 145 of 1994(A)

AS.8/1991 of DISTRICT COURT, THODUPUZHA
OS.98/1986 of SUB COURT,THODUPUZHA
.....

APPELLANT: IST RESPONDENT/ PLAINTIFF

RAM BAHADUR THAKUR PRIVATE LTD.,
SIDDHARTH BUILDING, 2ND MAIN ROAD,
WILLINGDON ISLAND, COCHIN 3.

BY ADV. SRI.JOSEPH MARKOSE
SRI.JOSEPH KODIANTHRA.

RESPONDENTS: APPELLANTS/ DEFENDANTS 1 & 2.
----

1. **STATE OF KERALA, REP.BY THE CHIEF SECRETARY TO GOVERNMENT, SECRETARIATE, TRIVANDRUM.**

2. **THE SPECIAL TAHSILDAR (LA.) TALUK OFFICE, PEERMADE.**

3. **GOPALA PILLAI (DIED), S/O. KRISHNA PILLAI, NELLIKAI ESTATE, VANDIPERIYAR.**

4. **HAJI A.S. MEERANNAN, S/O. MOHAMMED RAWTHER, AKKARA HOUSE, VANDIPERIYAR P.O. (DIED)**

5. **SMT.JAMEELABEEVI, W/O. HAJI A.S.MEERANNAN, AKKARA HOUSE, VANDIPERIYAR P.O.**

6. **PADMAVATHY, D/O. GOPALA PILLAI, NELLIKAI ESTATE, VANDIPERIYAR P.O.**

7. **SARADA, D/O. GOPALA PILLAI, NELLIKAI ESTATE, VANDIPERIYAR P.O.**

tss

SA. NO.8/1991

**8. JAYAMARY, D/O. GOPALA PILLAI,
NELLIKAI ESTATE, VANDIPERIYAR P.O.**

ADDL. R9 TO R15 ARE IMPLEADED.

**9. RAMEELA AGED 30 YEARS, D/O. HAJI A.S.MEERANNAN,
AKKARAYIL HOUSE VANDIPERIYAR 6845533, KERALA.**

**10. ABDUL RASAK, AGED 29 YEARS, S/O.
HAJI A.S.MEERANNAN, AKKARAYIL HOUSE,
VANDIPERIYAR 685533, KERALA.**

**11. ABDUL MINAF, AGED 23 YEARS,
S/O. HAJI A.S.MEERANNAN, AKKARAYIL HOUSE,
VANDIPERIYAR 685533, KERALA.**

**12. ABDUL JALAL, AGED 26 YEARS,
S/O. HAJI A.S.MEERANNAN, AKKARAYIL HOUSE,
VANDIPERIYAR 685533, KERALA.**

**13. ASHRAF MEERANNAN AGED 25 YEARS,
S/O. HAJI A.S.MEERANNAN, AKKARAYIL HOUSE,
VANDIPERIYAR 685533, KERALA.**

**14. SIDIK MEERANNAN AGED 24 YEARS,
S/O. HAJI A.S.MEERANNAN, AKKARAYIL HOUSE,
VANDIPERIYAR 685533, KERALA.**

**15. SALLI, AGED 29 YEARS, S/O. HAJI
A.S.MEERA, AKKARAYIL HOUSE,
VANDIPERIYAR 685533, KERALA.**

ADSDL. R9 TO T15 ARE IMPLEADED AS THE LEGAL REPRESENTATIVES OF DECEASED R4 AS PER ORDER DT. 31.5.2002 IN CMP. 980/98 .

**BY GOVERNMENT PLEADER
SRI.S.EASWARAN
SRI.V.SEETHARAMAN**

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

==========

S.A. NO. 145 OF 1994

==========

Dated this the 25th day of September, 2007

JUDGMENT

Plaintiff in O.S.98/1996 on the file of Sub Court, Thodupuzha is the appellant. Defendants are respondents. Appellant instituted the suit seeking a decree for declaration and permanent prohibitory injunction. Case of appellant was that plaint schedule property, which is in the middle of Nellikai Estate is a poramboke land having an extent of 10.13 acres in survey No.144 of Periyar Village and Nellikai Estate originally belonged to Tranvancore Tea Estate Company Ltd. Under Ext.A1 sale deed it was purchased by appellant Company on 17.9.1976. Since then Nellikai estate including the plaint schedule property has been in their possession. It was contended that even when the property was in the possession of Travancore Teas Estate Company Ltd, proceedings under the Land Conservancy Act was taken against Travandore Tea

Estate Company and they have been in possession of the property asserting their title and after Ext.A1 assignment deed, appellant Company has been in exclusive possession and enjoyment of the property and their possession was adverse to the interest of the Government and therefore they perfected title to the property by adverse possession and Government has no right to issue a patta to third respondent and patta granted in favour of third respondent is void. Appellant sought a decree for permanent prohibitory injunction restraining respondents from dispossessing appellant from the plaint schedule property. Appellant therefore sought a decree declaring that appellant has title and possession and also for a permanent prohibitory injunction restraining respondents from dispossessing appellant or interfering with the peaceful possession. A declaration that the patta issued in favour of third respondent is null and void was also sought. Though respondents 1 and 2, the State of Kerala, and Special Tahsildar (L.A.)

appeared, they did not file written statement. On the death of third defendant, defendants 6 to 8 were impleaded as legal heirs. They also did not file written statement. Defendants 4 and 5 filed a written statement contending that 10.13 acres is a Government land and it was not part of Nellikai estate and was not the possession of the appellant or the predecessors. It was contended that third respondent obtained patta in respect of 4 acres in Survey No.144 of Periyar Village and third respondent assigned that property in favour of respondents 4 and 5 as per sale deed 1029 and 1030 of 1983 of S.R.O. Peermade and appellant is not entitled to a decree in respect of their property.

2. Learned Sub Judge on the evidence of PW1 and Exts.A1 to A11 granted a decree declaring that appellant Company perfected title to the plaint schedule property by adverse possession and respondents 4 and 5 have no right or interest in the property. Respondents were restrained by a permanent prohibitory injunction from dispossessing

appellant.

3.Respondents 1 and 2 filed an appeal before District Judge, Thodupuzha in A.S.8/1991. Learned District Judge on reappreciation of evidence found that eventhough written statement was not filed by defendants 1 and 2, the documents produced by appellant along with the pleading establish that appellant did not perfect title by adverse possession. It was also found that as against the patta issued in favour of third respondent, an appeal was filed before Sub Collector and Ext.A2 order shows that appellant admitted that they are in possession of the property as the property would be assigned in faovur of the appellant by the Government and in such circumstance, appellant cannot contend that they have perfected title against the Government. Relying on the decision of the Apex Court in **S.M.Karim v. Mst.Bibi Sakina (AIR 1964 SC 1254) and State of Kerala v. Pathrose Mathai(1969 KLT 507)** it was held that appellant did

not establish title by adverse possession. The appeal was allowed and the suit was dismissed. It is challenged in the second appeal.

4. The appeal was admitted formulating the following substantial questions of law.

1. The trial court having accepted evidence adduced by appellant and granted a decree, whether first appellate court was legally correct in setting aside the findings of fact particularly when there was no pleading or evidence on the side of respondents 1 and 2.

2. Has the first appellate court wrongly assumed that Ext.A1 title deed recites that Travancore Tea Estates Company Ltd derived title over the estates in 1923?

3. Whether findings of first appellate court is sustainable, in the face of the evidence on record.

4. Learned counsel appearing for appellant and learned Government pleader were heard.

5. Learned counsel appearing for appellant

argued that first appellate court was not justified in interfering with the decree granted by trial court, when the appellant before first appellate court did not even file a written statement and did not dispute the plaint allegations. It was argued that what was contended by appellant in the plaint was that plaint schedule property is in the middle of the estate and it has been in the possession of the predecessor of the appellant and that possession continued with the appellant after Ext.A1 assignment and therefore first appellate court should not have interfered with the decree granted by the trial court. It was also argued that Government has no right to assign the property in the possession of the appellant to third respondent and as it is proved that appellant and their predecessors have been in exclusive possession of the plaint schedule property from 1899 onwards, first appellate court was not justified in holding that appellant has not perfected the title. It was also argued that

improvements were effected by the appellant and first appellate court was not justified in ignoring the evidence especially in the absence of a written statement.

6. True, ordinarily when no written statement was filed, plaint allegations are to be taken as correct and accepted. But though defendants 1 and 2 did not file a written statement, defendants 4 and 5 the assignees of third defendant, filed a written statement disputing the plaint allegations. In such circumstance, before granting a decree, courts have to find out whether appellant has perfected title by adverse possession.

7. The allegations in the plaint was that Nellikai Estate was owned by Travandore Tea Estate Company Ltd and they obtained the property from the Government during 1899, 1921, 1923 and 1928. It is the case that plaint schedule property was in the middle of the estate, surrounded on all sides by the Estate land forming part of Nellikai estate and it was being used for the purpose ancillary to the

cultivation of plantation crops like tea, cardamom etc. and for constructing labour lines and therefore title of the State was lost by adverse possession and limitation.

8. Though under Ext.A1 indenture dated 17.9.1976 rights over the Nellikai estate was transferred by the Travancore Tea Estate Company Ltd to the appellant, appellant has no case that plaint schedule property was transferred under Ext.A1. What is claimed by appellant was that though plaint schedule property does not form part of the property obtained under Ext.A1, it was surrounded by the property covered under Ext.A1 and therefore appellant and the predecessors have been in possession of the property from 1899 and right of the State was lost by adverse possession and limitation. Along with the plaint appellants produced Ext.A2, copy of the proceedings of Board of Revenue(L.R.) Thiruvananthapuram. That proceedings was in a revision filed by the appellant Company challenging the assignment

granted in favour of third respondent. Ext.A2 shows that before the Board of Revenue, case of appellant was that L.C case 1969 was initiated against their predecessor Tea Estate Company Ltd for encroaching the entire 10.13 acres of Government land, which is the plaint schedule property herein and in 1975 appellant Company filed a statement before Tahsildar admitting their possession and requesting for assignment of the land. It also shows that they raised a contention before the Board of Revenue that they were under the belief that the property will be assigned to them and when the properties are in their possession, it could not have been assigned in favour of third defendant. It is on the basis of the admission in Ext.A2, first appellate court found that when appellant admitted the title of the State and also sought assignment of the land, they cannot perfect title by adverse possession as against the State. That position of law cannot be challenged.

9. Appellant could perfect title by adverse possession, only if they or their predecessors have been in possession of the property adverse to the State. When it is the very case of the appellant that they filed application for assignment of the land to them before the Government and they are in possession of the property on the belief that property will be assigned to them, appellants cannot be heard to contend that they have been in possesison of the property adverse to the State. When Ext.A2 order shows that even when the revision was heard by the Board of Revenue on 8.1.1987, application for assignment of land preferred by the appellant Company was pending disposal. In such circumstaqnce, appellant cannot be allowed to contend that they have been in exclusive possession of the property and that too adverse to the State. Eventhough defendants 1 and 2, did not file a written statement, from the materials produced by the appellant itself, it is established that they have not perfected title by adverse possession.

In such circumstance, question of law as formulated is not involved on the facts of the case. There is no merit in the appeal or to interfere with the findings of first appellate court. Appeal is dismissed.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

S.A.NO.145 /94

JUDGMENT

25th SEPTEMBER,2007